



APPENDIX F – Draft Historic Resources Memorandum of Agreement

*******REVISED DRAFT (02-2012)*******

**MEMORANDUM OF AGREEMENT
Among the Federal Railroad Administration,
Mississippi Transportation Commission/Mississippi Department of Transportation,
The Chickasaw Nation,
Mississippi Department of Archives and History,
City of Tupelo, Mississippi,
and the Tupelo Historic Preservation Commission,
Regarding Mitigation of Impacts to Historic Resources
Associated with the Proposed Tupelo Railroad Relocation Study
City of Tupelo, Lee County, Mississippi**

WHEREAS, the Mississippi Transportation Commission/Mississippi Department of Transportation (hereinafter MDOT) is proposing the relocation of the existing BNSF Railway Company (hereinafter BNSF) main line through the Tupelo, Lee County, Mississippi central business district (Undertaking); and

WHEREAS, as the project sponsor, MDOT is seeking approval for the Undertaking from the Federal Railroad Administration (FRA), and accordingly, FRA is the lead federal agency pursuant to the National Environmental Policy Act (NEPA, codified at 42 USC4312 et seq.) and is the federal agency responsible for compliance with Section 106 of the National Historic Preservation Act, and hereinafter 16 U.S.C. 470f (Section 106); and

WHEREAS, FRA and MDOT, along with the Chickasaw Nation, “a federally recognized and sovereign Indian Nation” (Chickasaw), Mississippi Department of Archives and History (SHPO), the City of Tupelo (Tupelo), and the Tupelo Historic Preservation Commission (THPC), as a result of the consultation process in accordance with Section 106, have determined that it is appropriate to enter into this Memorandum of Agreement, pursuant to Section 800.6 of the regulations implementing Section 106 (36 CFR Part 800, and hereinafter Section 106 Regulations), which will govern the implementation of the Undertaking and satisfy FRA’s compliance with Section 106; and

WHEREAS, FRA has coordinated its compliance with Section 106 Regulations and NEPA, pursuant to 36 CFR 800.8 through the preparation of an Environmental Impact Statement (EIS) for the Undertaking; and

WHEREAS, through the process of preparing the EIS, FRA has determined that the Build Alternative will have an adverse effect on National Register of Historic Places (NRHP) listed and eligible historic properties qualifying for protection under Section 106. These properties are identified in Table 4-6 of the EIS and are mapped in Figure 4-6 of the EIS (annexed as Appendix A); and

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WHEREAS, through the consultation process, FRA, the Chickasaw, MDOT, SHPO, City of Tupelo, and THPC have reviewed the undertakings to consider feasible and prudent alternatives, including a No Build Alternative, to avoid or satisfactorily mitigate adverse effects; and

WHEREAS, the BNSF, who has jurisdiction over the management and operation of the existing main line through the City of Tupelo, has been notified of the adverse effect finding pursuant to 36 CFR 800.8 and elected to participate through submission of a Letter of Support (annexed as Appendix B); and

WHEREAS, Signatory or Concurring Party status is achieved only through signing this MOA.

NOW, THEREFORE, FRA, the Chickasaw, MDOT, SHPO, City of Tupelo, and THPC agree that if the Undertaking proceeds, the Undertaking shall be implemented in accordance with the following stipulations in order to take into account the effect of the Undertaking on historic properties, and further agree that these stipulations shall govern the Undertaking and all of its parts until this MOA expires or is terminated.

STIPULATIONS

FRA shall ensure that the following measures are implemented:

1. APPLICABILITY

1.1 This MOA applies to areas of concern within the Build Alternative as described by the Chickasaw Nation and NRHP-listed and eligible historic properties listed in the EIS and determined to be adversely effected by The Build Alternative.

1.2 The Build Alternative consists of elevating the existing BNSF mainline railroad on bridge or fill structure for approximately 2.8 miles within the BNSF's current legal Right-of-Way (ROW) as described in more detail in the EIS.

2. MITIGATION

To mitigate impacts to historic properties, the below listed parties commit to use the following mitigation measures:

2.1. FRA, MDOT, City of Tupelo, and THPC commit to use plantings and landscaping aimed at softening the appearance of the elevated railroad and providing a buffer to the surrounding viewscape.

2.1.1. Plantings and other landscaping choices will be determined by a committee including but not limited to representatives of the FRA, MDOT, City of Tupelo, THPC, SHPO, and affected city neighborhood associations (Downtown, Joyner,

and Gravlee). Only those considerations that receive a vote by at least fifty percent of the committee membership will be recommended for use.

2.1.2.Plantings and other landscaping will be located at the outer edges of or immediately adjacent to the BNSF ROW, require BNSF review and approval for use, and be maintained by the City of Tupelo.

2.2. FRA, MDOT, City of Tupelo, and THPC commit to eliminate proposed ROW fencing and maintenance service roads, where possible, during the design phase of the project, and to construct a pedestrian/multi-use trail within the outside 20 feet of the BNSF ROW.

2.2.1.Allowance of this pedestrian/multi-use trail will be subject to execution of a BNSF 30-day Cancellation License and procurement of required insurances and indemnifications by the project sponsor.

2.2.2.The pedestrian/multi-use trail must provide an adequate, physical barrier between it and operating railroad and railroad structure for the length of the trail on BNSF ROW. Vegetation such as a row of hedges or decorative fencing is acceptable.

2.3. FRA, MDOT, and the City of Tupelo shall commit to the incorporation of context sensitive design elements including but not limited to masonry walls, special lighting, long bridge spans, and brick paver treatments. All items relating to safety and structure are subject to FRA and BNSF approval prior to implementation. To fully achieve this, FRA, MDOT, and the City of Tupelo, shall utilize face-to-face meetings with residents adjacent to the project corridor (in this case affected citizens/citizen groups (e.g. THPC, Oren Dunn Museum, and city neighborhood associations [Downtown, Joyner, and Gravlee]) to generate ideas on how best to integrate the railroad and railroad structure into the fabric and character of the project area. The format of and venue for these meetings will be determined at a later date.

2.4. FRA, MDOT, and the City of Tupelo shall commit to remove the existing sign in the form of an arrow, pointing to the Tupelo Business District and referring to Tupelo as the “First TVA City,” to temporary storage during construction, and return it to its present location when construction is complete.

2.4.1.Since the TVA sign has been recently designated a local landmark by the THPC, FRA, MDOT, and the City of Tupelo will submit a scope of work detailing the removal, temporary storage, and reinstallation of the TVA sign to the THPC for review.

2.4.2.Upon receipt of the draft of the scope, the THPC will have 60 calendar days from receipt to review and provide comments to FRA, MDOT, and the City of Tupelo. All comments shall be in writing with copies provided to the other

consulting parties if requested. Lack of response within this review period will be taken as concurrence with the plan.

2.4.3. If revisions to the scope are required, FRA, MDOT, and the City of Tupelo have 20 calendar days from receipt to review the revisions and submit a revised scope to the THPC.

2.4.4. Once the scope is determined adequate by the THPC (with SHPO concurrence), the THPC shall issue a Certificate of Appropriateness to proceed with implementation of the scope.

2.5. MDOT, in consultation with the City of Tupelo, the THPC, SHPO, and city neighborhood associations [Downtown, Joyner, and Gravellee]), shall fund an intensive architectural field survey and inventory of the Gravellee and Joyner neighborhoods, located within the incorporated limits of Tupelo, Mississippi.

2.6. MDOT, in consultation with the City of Tupelo, the THPC, SHPO, and city neighborhood associations [Downtown, Joyner, and Gravellee]), shall design and erect interpretive public displays (signs), which will depict the City of Tupelo's railroad history and be distributed in appropriate areas throughout the project area.

2.7. FRA and MDOT, in consultation with the City of Tupelo and the SHPO, shall sponsor/fund a workshop/training session for the THPC in state and federal historical and archaeological preservation laws and regulations to assist the City of Tupelo and the THPC in promoting historic preservation at the "grass roots" level through existing Certified Local Government and Preserve America Community programs. These training sessions will also outline the responsibility of Federal agencies to consult with any Indian tribe that attaches religious and cultural significance to historic properties that may be affected by an undertaking in accordance with Advisory Council on Historic Preservation's (ACHP's) regulations, "Protection of Historic Properties" (36 CFR Part 800), implementing Section 106 of the National Historic Preservation Act (NHPA). The regulations remind Federal agencies they should be respectful of tribal sovereignty in conducting consultation and must recognize the government-to-government relationship that exists between the Federal Government and federally recognized Indian tribes.

2.8. FRA and MDOT shall ensure that any and all proposed ground disturbing activities associated with construction of the project will be monitored by professional archaeologists, qualified in accordance with the Secretary of the Interior's "Standards and Guidelines for Archeology and Historic Preservation," and the guidelines for archeological fieldwork and report writing in *Standards and Guidelines for Archaeological Investigations and Reports in Mississippi* (2001) and MDOT's *Guidelines for Contractors on Archaeological Investigations and Reports* (2007).

2.9. Pursuant to 36 CFR § 800.11(a), and prior to initiation of construction activities, FRA and MDOT shall ensure a plan of action is in place should archaeological resources be inadvertently or accidentally discovered during the construction phase of the project. In the event of a discovery, all construction or demolition activities will cease in the area of the discovery and consulting parties notified to provide for an assessment of the significance of the discovery and for data recovery/mitigation if necessary. If judged necessary, the FRA and MDOT will develop a treatment plan for historic properties which shall be reviewed and approved by the SHPO and the Chickasaw.

2.10. Human remains are not expected to be discovered during this undertaking. However, prior to initiation of construction activities, FRA and MDOT shall ensure a plan of action is in place if they are encountered during implementation of the project. Should human remains be discovered, all activity in the vicinity of the discovery shall cease and the FRA and MDOT notified immediately. The FRA and MDOT shall then notify the SHPO and the Mississippi Band of Choctaw Indians, the Choctaw Nation of Oklahoma, the Chickasaw, the Jena Band of Choctaw Indians, the Quapaw Tribe of Oklahoma, the Tunica-Biloxi Tribe of Louisiana, and the Alabama-Coushatta Tribe of Texas. The treatment of human remains shall follow the guidelines in the ACHP's "Policy Statement Regarding Treatment of Burial Sites, Human Remains, and Funerary Objects" published February 23, 2007. Additionally, the treatment of human remains shall follow the guidelines developed in accordance with Mississippi Code (hereinafter MC) §39-7-31, "The Antiquities Law of Mississippi" (1972, amended 1983) and §97-29-19, "Crimes against Public Morals and Decency."

3. SUBMITTALS

3.1. Intensive Architectural Field Survey/Inventory of the Gravlee and Joyner Neighborhoods

3.1.1. MDOT, in consultation with the City of Tupelo, the THPC, SHPO, and city neighborhood associations [Downtown, Joyner, and Gravlee]), shall fund the inspection and documentation of all resources within these neighborhoods meeting the 50-year age guidelines for inclusion in the NRHP that fell outside the scope of the cultural resources survey conducted in association the DEIS (see the report *Cultural Resources Investigations for the Tupelo Railroad Relocation Study* [2009] by Brockington and Associates, Inc. [Brockington]).

3.1.2. All resources documented as part of this architectural survey shall be photographed and accompanied by notes as to the design, character defining features or any other architecturally significant components. Resource documentation should be done on approved SHPO forms and comply with SHPO survey guidelines (annexed as Appendix C).

- 3.1.3. Historical information about the resources shall be gleaned from tax assessor's records, real estate plats, and property owners when available. In addition, archived cartography, such as Sanborn Fire Insurance Maps, as well as historic aerial photography, historic topographic and soil survey maps at the Natural Resources Conservation Service shall be consulted.
- 3.1.4. The draft architectural survey report, summarizing the results and SHPO Historic Resources Inventory Forms, shall be submitted to FRA, MDOT, the SHPO, City of Tupelo, and the THPC for review and comment.
- 3.1.5. The SHPO, City of Tupelo, and the THPC shall provide FRA and the MDOT review comments no later than 60 days after receipt of the draft architectural survey report.
- 3.1.6. FRA and the MDOT shall take into consideration SHPO, City of Tupelo, and the THPC comments during preparation of the final architectural survey report.
- 3.1.7. FRA and the MDOT shall provide the SHPO with the final report as well as final SHPO Historic Resources Inventory Forms upon completion of the study. Additional architectural survey reports will be made available to the City of Tupelo, THPC, and interested individuals and organizations such as libraries, historical societies, and museums.

3.2 Interpretative Public Displays

- 3.2.0 FRA and MDOT shall consult with the SHPO, the Chickasaw, the City of Tupelo, the THPC, and city neighborhood associations [Historic Mill Village, Downtown, Joyner, and Gravlee]) to identify appropriate sites for interpretive public displays (signs) and to determine the content of the displays.
- 3.2.1 FRA and MDOT shall notify the SHPO, the Chickasaw, the City of Tupelo, THPC, and city neighborhood associations [Historic Mill Village, Downtown, Joyner, and Gravlee]) in writing regarding the content and completion of the display designs.
- 3.2.2 The SHPO, the Chickasaw, the City of Tupelo, the THPC, and city neighborhood associations [Historic Mill Village, Downtown, Joyner, and Gravlee]) shall provide FRA and MDOT with review comments no later than 60 days after receipt of the notification letter described above (Section 3.2.1).

- 3.2.3 FRA and the MDOT shall take into consideration SHPO, Chickasaw, City of Tupelo, THPC, and city neighborhood associations [Historic Mill Village, Downtown, Joyner, and Gravlee]) comments prior to fabrication and installation of the interpretive displays.

4. PROFESSIONAL STANDARDS

All work pursuant to this MOA requiring such oversight shall be prepared using documents developed by or with the assistance of a person or persons meeting the minimum professional qualifications for Historic Architect, Architectural Historian or Historian included in “Secretary of the Interior’s Historic Preservation Professional Qualification Standards” (Federal Register Vol. 62, No.119, pp. 33719).

5. AMENDMENT

The FRA, the Chickasaw, MDOT, SHPO, City of Tupelo, and THPC may request that this MOA be amended, whereupon they shall consult in accordance with 36 CFR Part 800 to consider such amendment. No amendment shall take effect until it has been executed by the signatories to this MOA.

6. TERMINATION

The FRA, the Chickasaw, MDOT, SHPO, City of Tupelo, or THPC may propose to terminate this MOA by providing 30-calendar days notice to the other signatories explaining the reasons for the proposed termination. The parties shall consult during this period to seek agreement on amendments or other actions that shall avoid termination.

7. DURATION

This MOA shall become effective upon execution by FRA, MDOT, and SHPO and shall remain in effect until all terms of this MOA have been satisfactorily fulfilled. In the event that any obligation under the MOA cannot be performed, the FRA agrees to use its best efforts to renegotiate the provision, and if necessary, to initiate consultation regarding development of an amendment to this MOA.

EXECUTION AND IMPLEMENTATION of this MOA evidences that FRA has consulted with the Chickasaw, MDOT, SHPO, City of Tupelo, and THPC on this Undertaking and its effects on historic properties, made assurances regarding and then to the extent possible mitigated the determined adverse effects of the undertaking on historic properties, and, therefore, satisfied its Section 106 responsibilities. All provisions and stipulations stated in this MOA shall not be executed and implemented until a Record of Decisions (ROD) has been signed by FRA.

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Associated with the Proposed Tupelo Railroad Relocation Study
City of Tupelo, Lee County, Mississippi

Submitted to the Advisory Council on Historic Preservation
Pursuant to 36 CFR 800.6(a)

Execution of this MOA by FRA, the MDOT, the Chickasaw Nation, SHPO, City of Tupelo, and the THPC and implementation of its terms evidences that the FRA will ensure the aforementioned stipulations are carried forth in order to mitigate the effects of the undertaking upon NRHP- listed and eligible historic properties qualifying for protection under Section 106.

THE FEDERAL RAILROAD ADMINISTRATION

By: _____
(Name, Title)

Date: _____

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MISSISSIPPI STATE HISTORIC PRESERVATION OFFICER

By: _____
H.T. Holmes, State Historic Preservation Officer

Date: _____

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CHICKASAW NATION

By: _____ Date: _____
Governor Bill Anoatubby, Chickasaw Nation

“Nothing contained in this agreement shall be construed to waive the sovereign rights of the Chickasaw Nation, its officers, employees or agents.”

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MISSISSIPPI DEPARTMENT OF TRANSPORTATION

By: _____
Executive Director

Date: _____

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CITY OF TUPELO

By: _____
(Name, Title)

Date: _____

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TUPELO HISTORIC PRESERVATION COMMISSION

By: _____
(Name, Title)

Date: _____